BRC Injected Rubber Products, Inc. *and* United Electrical, Radio and Machine Workers of America, (UE). Cases 25–CA–20287 (amended) and 25–CA–20346

May 18, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On October 30, 1991, Administrative Law Judge Irwin Kaplan issued the attached decision. The Respondent and General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board had delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions,[3] and to adopt the recommended Order,[4] as modified.

[1] The General Counsel and the Respondent have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The judge found that the Respondent's refusal to rehire Sharon Angelo violated Sec. 8(a)(3) of the Act. The Respondent contended that its refusal to rehire Angelo was pursuant to a change in its rehiring policy, instituted shortly before Angelo quit in September 1989, whereby it no longer rehired employees who had quit or who had been terminated with a high number of points for attendance infractions. The judge rejected this contention as pretext. In its exceptions, as proof of its policy and the policy's application to Angelo, the Respondent cites to eight individuals who it says were all denied reemployment based on the new rehire policy. It particularly notes two of those individuals who were rejected before Angelo quit and before she was denied rehire. We find no merit in the Respondent's contention. The relevant documents supplied by the Respondent do not indicate that these employees were not rehired because of their earlier attendance problems. While the Respondent's corporate director of personnel, Maher, testified to that effect, the judge considered him to be a generally incredible witness. See, e.g., fn. 18 of the judge's decision.

[3] The judge found that the Respondent violated Sec. 8(a)(3) by assigning more arduous and onerous work to Cheryl Hitchcock and Rodney Williams. They were assigned to clean the pits, which is acknowledged to be a dirty and messy job, and any employees assigned to that job can expect to become quite dirty. As a result of the assignment, Hitchcock's shirt and all of her other clothes were ruined. The General Counsel seeks a make-whole remedy of monetary reimbursement for the loss of Hitchcock's clothes and we shall grant that remedy since her loss was the direct result of the Respondent's illegal conduct of assigning her to clean the pits.

[4] We would grant the General Counsel's exception to the judge's failure to recommend a remedy for his finding that the Respondent maintained, and applied to employee Rodney Williams, a ''rule prohibiting solicitation on 'company time''' that is ''invalid'' because it is unlawfully overbroad. *New Process Co.*, 290 NLRB 704, 708 (1988); *Our Way, Inc.*, 268 NLRB 394 (1983). We note that although such a violation was not alleged in the complaint, it was litigated and argued by the parties in their briefs to the judge. The Respondent has not excepted to the judge's finding concerning the rule, and the cease-and-desist remedy sought by the General Counsel is an appropriate remedy for such a violation.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, BRC Injected Rubber Products, Inc., Churubusco, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(a) and reletter the subsequent paragraphs.

''(a) Maintaining and applying a rule prohibiting solicitation on company time.''

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs.

''(b) Make whole Cheryl Hitchcock for the loss of the clothes she ruined as a direct result of the Respondent's illegal assignment to her of more arduous and onerous work because of her union activities.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT maintain and apply a rule prohibiting solicitation on company time.

WE WILL NOT fail and refuse to rehire Sharon Angelo because of her activities on behalf of United Electrical, Radio and Machine Workers of America, (UE).

WE WILL NOT discriminatorily assign more arduous and onerous work to employees because of their union activities.

WE WILL NOT confiscate union material from employees, coercively interrogate them, or engage in surveillance of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the rights guaranteed them by Section 7 of the Act.

WE WILL offer Sharon Angelo full and immediate employment to the position she would have held had she been rehired or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay, plus interest, as a result of our previous unlawful refusal to rehire her.

WE WILL make Cheryl Hitchcock whole for the loss of the clothes she ruined as a direct result of our illegally assigning her more arduous and onerous work because of her union activities.

WE WILL expunge from our records the unwarranted written warning we issued to Rodney Williams for engaging in protected solicitations and advise him, in writing, of our action.

BRC INJECTED RUBBER PRODUCTS, INC.

Walter Steele, Esq., for the General Counsel.
John C. Theisen, Esq. (Gallucci, Hopkins & Theisen), of Fort Wayne, Indiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

IRWIN KAPLAN, Administrative Law Judge. This case was heard on February 6, 7, and 8, 1991, in Fort Wayne, Indiana. The underlying charges in Case 25–CA–20287 were filed by the United Electrical, Radio and Machine Workers of America, (UE) (Charging Party or Union) on December 4, 1989. The Charging Party filed additional charges in Case 25–CA–20346 on January 8, 1990. On January 9, 1991, the Charging Party filed amended charges in Case 25–CA–20287. These charges and amended charges gave rise to an order consolidating cases, complaint and notice of hearing which issued on February 28, 1990, alleging that BRC Injected Rubber Products, Inc. (Respondent or BRC) engaged in certain acts and conduct violative of Section 8(a)(3) and (1) of the National Labor Relations Act (the Act).

More particularly, it is alleged in Case 25–CA–20287, amended, that Respondent violated Section 8(a)(3) of the Act by issuing on or about October 26, 1989, an unwarranted written warning to employee Rodney Williams and, on or about October 26 and November 1, 1989, assigning employee Cheryl Hitchcock more arduous and onerous terms and conditions of employment. Further, it is alleged in the order consolidating cases, that the Respondent additionally violated Section 8(a)(3) of the Act, by inducing employee Sharon Angelo to resign her employment on or about September 26, 1989, by promising to rehire her, and by subsequently reneging on its promise; and, on or about October 27, 1989, assigning employee Rodney Williams to more arduous and onerous terms of employment.

With regard to independent 8(a)(1) allegations, it is alleged that Respondent, through various supervisors, violated the Act by: threatening employees with unspecified reprisals; threatening a plant closure if employees selected the Union as their collective-bargaining representative; coercively interrogating employees; warning employees that they would not be selected for promotion if they openly supported the Union; and confiscated from an employee a union roster which, inter alia, represented employee support for higher wages. These alleged unlawful acts occurred variously over the months of June through October 1989.

Still further, at the close of the hearing, counsel for the General Counsel moved over Respondent's objection to amend the pleadings to the proof to include, inter alia, an alleged admission of unlawful surveillance.

The Respondent filed an answer, admitting, inter alia, jurisdictional facts and the supervisory and agency status of certain individuals but denied that it violated the Act in any manner. With regard to the various alleged threats, warnings, and interrogation in violation of Section 8(a)(1) of the Act, the Respondent contends that the allegations were not encompassed by any of the Union's discrimination charges or amended charges and are time-barred for consideration under Section 10(b) of the Act.

Based on the entire record, including my observations of the demeanor of the witnesses as they testified, and after careful consideration of the posttrial briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, BRC Injected Rubber Products, Inc., at all times material, has maintained its principal office and places of business in the State of Indiana, including a facility located in Churubusco, Indiana, the focus of the instant allegations. Respondent is essentially a manufacturer or supplier of rubber products to the automotive industry. In connection with the aforenoted business operations, the Respondent has, during the past 12 months, a representative period, sold and shipped from its Churubusco, Indiana facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Indiana. It is alleged, Respondent admits, the record supports, and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is alleged, but Respondent denied in its answer, that the United Electrical, Radio and Machine Workers of America, (UE) is a labor organization within the meaning of the Act. The Respondent did not address this allegation at the hearing or in its brief and appears to have abandoned its denial. In any event, the record disclosed, inter alia, that the Union has provided employees union authorization cards for membership and collective-bargaining purposes. Moreover, I take notice of the long line of Board cases which have established the Union as a labor organization for collective-bargaining purposes. In these circumstances, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act, as alleged.

II. THE UNFAIR LABOR PRACTICES

A. *Background and Sequence of Events*[1]

The Respondent operates five facilities, all located in northeastern Indiana and all within approximately a 50-mile radius of each other. As noted previously, all the allegations involve only the Respondent's Churubusco plant. That plant became operational in May 1985 and has always functioned on a three-shift basis. At the time of the instant hearing, the Respondent employed approximately 175 employees at the Churubusco facility. (Tr. 31.) The employees at that location have never been represented by a labor organization.

While it appears that some employees at the Churubusco facility discussed the prospects of union representation as

[1] Unless otherwise noted, the facts as set forth in this section are either undisputed or credited.

early as December 1988, the first indication of an organizational nature occurred in May 1989 and continued over the summer months when employees, inter alia, signed union authorization cards, attended union meetings, and distributed union newsletters at the plant. Former employees Sharon Angelo, Rodney Williams, and Cheryl Hitchcock were all active on behalf of the Union and were allegedly discriminated against for such activities.

1. Sharon Angelo

Sharon Angelo signed a union authorization card in May 1989.[2] In June, Angelo began wearing at work two types of union buttons: one, the size of a quarter and the other, the size of a half dollar. Also in June, and over the following summer months, Angelo gave out union newsletters in the breakroom at the plant. (See, e.g., G.C. Exhs. 8, 9, 10, and 11.)

According to Angelo, after she started wearing the union buttons, Supervisor Hance Hicks (he became production manager in July 1989), on some four different occasions questioned her about the scheduling of union meetings. Hicks also asked Angelo to name the employees expected to attend those meetings. Angelo testified that on one of these occasions, in late June or early July, Hicks told her that if the Union got in the Company would close its doors. (Tr. 118.) Hicks denied that he observed Angelo distributing union literature as well as having any discussion with her about the Union. He could not recall whether he noticed that Angelo wore union buttons. (Tr. 776–777.) On the other hand, Hicks acknowledged that he heard rumors that Angelo was active for the Union.[3] Other high management officials and supervisors also acknowledged that they knew of union activities at the plant as early as May or June 1989. (Tr. 388, 435, 460, 505.)

In July or August, Angelo, who was then a class A operator, applied for an opening for a technician position. Angelo had no previous experience as a technician and that opening went to another employee. According to Angelo, a few weeks later, the Personnel Manager Robert Calahan told her that if she had not been supporting the Union, she would have gotten the technician's job. (Tr. 121.) Calahan denied making the statement. (Tr. 499–500.) Also in July, according to Angelo, Corporate Director of Personnel Thomas Maher asked her when the next union meeting would be conducted and who was going to be there. At the time, Angelo was in Maher's office in connection with some insurance matter. (Tr. 147–148.) While Maher recalled meeting with Angelo over an insurance problem, he denied that he ever spoke to her about the Union. (Tr. 411–412.)

Angelo last worked for Respondent on September 26. According to Angelo, after she had just completed her break that day, she asked Hicks for permission to leave the plant early for a job interview at North Star Industries. Hicks assertedly asked Angelo if she was aware that she already had 12-1/2 attendance points (13 points was automatic dismissal)[4] and that she could be terminated. Angelo also testified that Hicks told her that she could use him as a job reference and reminded her that if the job did not work out she could always come back. (The Respondent had a history of rehiring employees previously terminated for poor attendance.) Hicks assertedly gave Angelo the option of resigning or being terminated and she elected to quit. Hicks' account was somewhat different.

According to Hicks, he learned from Angelo's immediate supervisor, David Baxter, that Angelo was leaving the Company and he visited with Angelo to confirm what Baxter told him. Hicks testified that Angelo told him that it was true that she was leaving and added that she could always come back to work for the Respondent. To this, Hicks testified that he merely told Angelo that if she wanted to come back that she'd have to submit another application. Hicks denied that he had the authority to hire anyone or that he promised to rehire anyone.[5] (As noted previously, it is alleged, inter alia, that Hicks induced Angelo to quit by promising to rehire her.)

As testified by Angelo, she quit her job at North Star Industries after working for that company for only 1 day. Within days, she called Robert Calahan who assertedly told her to submit an application. While Calahan was unclear about the circumstances, he noted at one point in his testimony that he might have indicated to Angelo to come to the plant to submit her application even though he knew that she would not be rehired. (Tr. 516.) Angelo testified that she went to the Churubusco plant that same day with her application and met with Calahan. She did not, however, submit her application at that time. (Tr. 169–170.) According to Angelo, while in Calahan's office, Hicks joined them and told Calahan that the Company was not taking applications and it was not hiring. Angelo testified that Hicks also noted that as long as she supported the Union, she would not be rehired. (Tr. 140.) Calahan denied that he heard Hicks make any such statement. As noted previously, Hicks also denied that he ever spoke to Angelo about the Union.

In early October, Angelo returned to the plant to be reimbursed for her eyeglasses which had broken while she was still employed by BRC. While there, Angelo had a chance conversation with Director of Personnel Thomas Maher. As testified by Angelo, Maher asked her how her job hunting was going and she told him that she wanted to return to work at BRC. According to Angelo, Maher told her that as long as she was prounion, she couldn't get a job. (Tr. 142.) Maher recalled meeting with Angelo at the plant on only one occasion after she left the Company and asserted that he merely said hello to her. He denied saying anything about the Union to Angelo. (Tr. 410.)

On October 20, Angelo reapplied for employment and this time submitted a new formal application (R. Exh. 14.) Angelo, when asked on cross-examination why she submitted an application, given her earlier testimony that she was told by Hicks that the Respondent wasn't hiring and would not then take her application responded: ''Because I knew they had

[2] Unless otherwise indicated, all dates refer to 1989.

[3] At times, *Angelo* and *Hicks* appeared less than forthright, particularly when responding to questions dealing with the Union. While on balance, for reasons noted infra, I found *Angelo* more credible than *Hicks*, I do not credit all the statements she ascribed to him about the Union.

[4] The attendance policy will be described move fully infra.

[5] *Angelo's* claim for unemployment was denied by the Indiana Department of Employment and Training Services. That agency concluded: ''The claimant voluntarily left employment without good cause in connection with the work when she quit available work.'' (R. Exh. 18.)

a high [employee] turnover rate and I figured they'd probably be hiring soon.'' (Tr. 170.)

The Respondent had long had a high employee turnover rate. It also had long history of rehiring employees, even if they had been previously discharged. However, the Respondent asserted that insofar as rehiring employees with poor attendance (10 or more points), this policy changed in August, approximately 1 month before Angelo quit the Company.[6]

According to Respondent's witnesses, a controversy over the rehiring of employee Bill Simkins in August led to a reexamination and change of its rehiring practices. Maher testified that Simkins had twice previously worked for the Company and had a history of poor attendance. When Plant Manager Glen Barlett had come across Simkins' application, he told Calahan that he would not want him rehired. According to Barlett, Simkins had a poor work ethic, was moody, and had attendance problems. Nonetheless, Simkins was rehired and when Barlett discovered that he complained to Respondent's owner and president, Charles Chaffee. The latter directed Maher to investigate why Simkins was rehired over the plant manager's objection. In doing so, Maher looked at employee files and concluded that when the Company rehired employees with poor attendance they continued the same attendance pattern. Thus, he recommended to Chaffee that they no longer rehire employees who had accumulated a high number of attendance points at the time of their departure from the Company and this became the new policy.

At the time of Angelo's departure on September 26, she had already accumulated 12-1/2 points for attendance infractions. Under Respondent's attendance policy, 13 points mandated termination. In this connection, on September 21, Angelo had received an employee warning notice advising her that she had already accumulated 12-1/2 points and that ''at 13 points you will be terminated.'' (R. Exh. 8.)

The Respondent denied that its refusal to rehire Angelo or anyone else had anything to do with their union activities. Rather, it contends that Angelo was not rehired consistent with its new policy of no longer rehiring employees who had acquired a high number of attendance points.[7]

2. Rodney Williams

Rodney Williams first worked for Respondent from May 1986 to July 1987. During that period of time, Williams was primarily a press operator. An operator feeds rubber through the press which is molded into various automotive parts. Williams testified that he left the Respondent in July 1987 because he suffered asthma problems (apparently related to the rubber and the fumes of the press). He was rehired in November 1987 and remained with the Respondent until he was terminated in November 1990 for accumulating 13 attendance points. During this second term of Williams' employment, he worked variously as a press operator, briefly as a shipping and receiving clerk, and also from time to time as a utility employee. (It is not alleged that Williams' discharge was predicated on his union activities but that he was assigned more arduous and onerous work as a result of those activities.)

Williams commenced his union activities in June 1989. He attended his first union meeting that month on a Saturday and thereafter on Saturdays about every 2 weeks for nearly 1 year. He was also otherwise engaged in a wide range of union activities. Thus, commencing in June and over the following summer months, William signed a union card and, tried to get other employees to join the Union, distributed union newsletters in the plant breakroom, and wore union buttons and a union shirt at work. There is no evidence or allegation to the effect that the Respondent took any retaliatory measures against Williams for his union or any other protected concerted activities until October 1989.

As noted previously, the Respondent knew that its employees were engaged in union activities as early as May or June 1989. In this connection, either in May or June, at a meeting of supervisors and technicians, Maher discussed the union situation and distributed to those in attendance a ''Supervisor's Guide'' which noted, inter alia, what supervisors are permitted to do and what they cannot do with regard to union activities. (R. Exh. 37; Tr. 388.) By letter dated October 24, 1989, to Respondent's president, Charles Chaffee, Union Field Organizer Kimberly Lawson referred to the then ongoing union organizational campaign and, inter alia, demanded that Respondent ''increase the pay rate for all your production and maintenance workers by a minimum of $1.00 per hour.'' (G.C. Exh. 14.) On October 26, Williams circulated a roster at the plant to get employees to sign up to picket in front of the Chamber of Commerce building and to hold a press conference demanding a $1 an hour more in wages. (Tr. 248–249; G.C. Exh. 3.) It is alleged that on October 27, Williams was assigned arduous and onerous work as a result of these activities. The circumstances dealing with these activities are as follows.

On the morning of October 26, Williams solicited and obtained a few signatures on the aforenoted roster in the breakroom at the plant just before his shift was to begin. Williams testified that a few employees told him to wait until later in the day. One of them, Cheryl Hitchcock, told Williams that if he would meet her at her press she would sign the roster. This was done around noon. Around that time Williams gave Hitchcock the roster and relieved her as the operator on the press so that Hitchcock could go to the restroom. On that occasion, Williams was employed as a utility person and in that capacity his responsibilities included relieving the press operators on restroom breaks. Hitchcock signed the roster, folded it, and stuck it in Williams' back pocket. This was observed by Production Manager Hicks who was standing nearby.

Hicks motioned Williams to go into Supervisor Dave Baxter's office.[8] There, Hicks and Baxter obtained the roster

[6] Under this system, employees are charged one point for each day of absence. However, if an employee calls in sick for 3 days, only one point is charged. Points and fractions of points are also charged for tardiness and for leaving work early. (Tr. 54–56.)

[7] For reasons discussed infra, I reject this defense as implausible and pretextual and not supported by credible evidence.

[8] The circumstances recited are as credibly testified by *Williams*. On the basis of demeanor factors and in other respects, I found *Williams* to be a most impressive witness. Thus, I found him to be responsive, consistent, plausible, and forthright without any apparent effort to embellish his testimony. In short, I credit his testimony in all material respects where in conflict with Respondent's witnesses. As for Respondent's witnesses, I found them at times unresponsive, elusive, vague, inconsistent, and implausible. Some examples will be noted infra.

from Williams and looked at it. Hicks decided that Maher should become involved and instructed Baxter and Williams to accompany him into Maher's office. Once inside, Hicks handed the roster to Maher who then examined the document. Maher gave Williams a verbal written warning and cautioned him that he faced discipline and possibly termination if he engaged in such activities again. Further, Maher told Williams that he would place a note in his file. The note read as follows:

> Rodney Williams was observed passing a petition around for signature [sic] during working hours. He was told that he could not do that on company time. He was given a verbal warning. He was told next time, it would be a written warning. He said he understood.[9] [R. Exh. 42.]

The following day, Friday, October 27, Hicks assigned Williams to clean a press pit for the first time. The pits accumulate debris and waste oil from the presses. To clean up involves the use of such tools as rakes and hydraulic pumps and as a result, employees become quite dirty. At the time of the assignment, Williams was a utility employee. In that capacity his responsibilities were mainly to supply the production line with sufficient rubber and metal to keep the presses operating and also to relieve the operators at their presses during restroom breaks. (Tr. 239; 555–556.) Williams told Hicks that his responsibilities in utility did not include the pits but the latter disagreed. Williams cleaned the pits on that occasion as instructed.[10] That same day, Cheryl Hitchcock was also assigned cleanup work in the pits for the first time.

3. Cheryl Hitchcock

Cheryl Hitchcock was employed by the Respondent from April 1989 to February 1990 at which time she quit. She was promoted from press helper to press operator in July 1989 and worked in that latter capacity until she left the Company.

Hitchcock actively and openly supported the Union. Thus, during the summer months she wore a union shirt and union buttons at work and attended union meetings. She testified credibly and without contradiction that on a number of occasions during June, July, and August 1989, she was questioned about the Union by then-Supervisor Sam Kaauwai.[11] As testified by Hitchcock, Kaauwai generally questioned her on Mondays, after the Saturday union meetings were held. Kaauwai asked Hitchock on those occasions whether she had attended the union meetings and what she hoped to gain for her union support. On one occasion in late June or early July, Kaauwai noticed that Hitchcock was wearing a union button and declared: ''Well, you know, there'll be hell to pay.''

As noted previously, Hitchcock was involved in the roster incident with Williams on October 26. Hitchcock also signed the roster that day signifying that she would join other employees on Sunday, October 29, in publicizing their demands for higher wages and better working conditions. (G.C. Exh. 3; Tr. 290–291.) Hitchcock was assigned to clean the pits for the first time (as had Williams), on Friday, October 27, the day after the roster incident.

On the day Hitchcock was assigned to the pits, she wore a new union shirt which contained the printed words ''our wages are out of the stone age'' or words similar thereto and identified the union organizing committee. (Tr. 294.) Hicks, who made the assignment, noted that Hitchcock was wearing a new shirt and asked her about the printed words which she explained. That day, Hitchcock and employee Fred Kien, also a press operator, were assigned to clean pit 306. Kien had also signed the roster.[12]

As testified by former Plant Manager Glen Barlett, pit 306 was particularly difficult to clean due to an oil leak. Thus, Hitchcock and Kien had to dig out between 100 and 150 pounds of sticky rubber and other parts which had fallen into the pit. (Tr. 559.) In doing so, Hitchcock became quite dirty and ruined her clothes. At one point, Hitchcock told Hicks, who had come by to inspect, that she had cleaned the pit as best she could but Hicks wasn't satisfied. Hicks told Hitchcock that the pit was not clean enough and that he would hate to see her ruin her clothes on Monday. Hicks also noted that he could no longer read the writing on Hitchcock's union shirt. Barlett and Hicks discussed the condition of Hitchcock's clothes and decided to get her a change of clothing from Hicks' home. Barlett testified that the Company has paper overalls and ''chastised [himself] for not thinking of them earlier.'' (Tr. 568.)

That same day, Hitchcock complained to Hicks, without any satisfaction, that she was getting sick from the smell and she had also cut her hand on a piece of metal which required a tetanus shot. Approximately 1 or 2 weeks later, Hitchcock was assigned to clean the pits a second time. Again, this assignment was during the week but this time Supervisor Baxter provided Hitchcock with plastic paper coveralls to wear over her clothes.

B. *Discussion and Conclusions*

1. Sharon Angelo

a. *Inducing Angelo to quit*

It is alleged that on or about September 26, 1989, the Respondent induced Angelo to resign by promising to rehire her and that the Respondent, in essence, reneged on its promise in violation of Section 8(a)(3) of the Act.

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[9] The record disclosed that memorializing the incident in this fashion is a departure from past practice. Under Respondent's printed guidelines, employees receive only a verbal warning for an initial infraction. (G.C. Exh. 2 at p. 2.) As testified by Maher, ''[N]ow that I look back up on it, we shouldn't have given him the warning.'' (Tr. 51.)

[10] The record disclosed that the pits were normally cleaned on Saturdays and often by volunteers who wanted overtime work. According to Plant Manager Glen Barlett, while the pits were generally cleaned on Saturdays, one general utility employee, Marvin Cardin, performed such work, when needed, during the week. However, Barlett also testified that the responsibilities of the utility position, only to a ''very minor extent,'' involved cleaning the pits. (Tr. 555.)

[11] Apparently *Kaauwai*, an admitted statutory supervisor and agent quit in August 1989. (Tr. 285.) *Kaauwai* did not testify and no explanation was made for the failure to call him as a witness.

[12] A few days after Kien signed the roster he had second thoughts and went to Maher to tell him about his concerns. He told Maher that Williams had passed the roster around on the production floor and that he didn't really know what he was signing. It is not alleged nor does the record reveal any misconduct directed at Kien. The Respondent had Kien testify as its witness.

The record disclosed that Angelo made arrangements to be interviewed for a job on September 26, 1989, at North Star Industries before she discussed her employment prospects elsewhere with any of Respondent's officials. On September 26, Angelo told Production Manager Hicks about her job interview and asked for permission to leave early. Angelo testified that Hicks asked her whether she was aware that she had accumulated 12-1/2 attendance points and that she faced termination by reaching 13 points if she left early.[13] Hicks gave Angelo the option to resign, which the latter elected to do. According to Angelo, Hicks also told her that if the new job does not work out, she could always come back.

Hicks, on the other hand, testified that he learned that Angelo was quitting and asked her to confirm that report. When she did, Hicks told her that he was happy for her. However, contrary to Angelo's testimony, Hicks asserted that it was Angelo who stated that she could always come back. According to Hicks, he merely told Angelo that if she wanted to come back she had to submit a new application.

It is noted that Angelo was aware that she had 12-1/2 points on September 26 and faced automatic discharge over her next attendance infraction. (Tr. 178–179.) Only 5 days earlier Angelo had received a written warning to that effect. (R. Exh. 8.)

Angelo denied that the number of attendance points had anything to do with her decision to resign. However, on the state of this record, I am far from persuaded that her decision to resign in whole or in part was predicated on any promise or inducement Hicks assertedly made. Thus, it is noted, inter alia, that in Angelo's first affidavit given to the Board agent back in December 1989, she ascribed reasons for her decision unrelated to Hicks' alleged inducement as the basis for her decision to quit. There in pertinent part, Angelo stated as follows:

> I decided that between being on press 208 and 103 and the Company permitting [employee] Kien to harass me, it was just hard on me, so I quit. [Tr. 153–154.]

Here, the record is devoid of any showing that Angelo actually relied on Hicks' alleged inducement. As far as Angelo and other employees were aware, the Respondent at that time had a liberal policy of rehiring former employees, even if previously discharged for poor attendance.[14]

On the basis of the foregoing and noting particularly that Angelo had already decided to quit[15] and had made arrangements for a job interview before she spoke to Hicks, I find that the General Counsel had not established a prima facie that Respondent induced Angelo to quit as alleged. Accordingly, I shall recommend that this allegation be dismissed.

[13] Under Respondent's printed rules, inter alia, an employee is charged ''[o]ne point for leaving work early by more than 30 minutes, *with permission*.'' (G.C. Exh. 2, at p. 3, emphasis supplied.)

[14] While the Respondent asserted that this policy changed in August (Angelo quit in September), the so-called new policy had not been communicated to employees.

[15] *Angelo* also testified that she had been job hunting for weeks because employee Kien had been ''bothering me so much.'' (Tr. 134–135.)

b. *The failure to rehire Angelo*

Angelo quit her new job at North Star Enterprises on October 2, 1989. (R. Exh. 19.) Soon after, she contacted Calahan about returning to work for Respondent and was told to submit another application. (Tr. 139, 515–517.) Angelo formerly reapplied on October 20. (R. Exh. 19.)

According to Respondent, Angelo was not rehired because she had accumulated too many points for poor attendance and that since August 1989, its policy was to no longer rehire such employees. The General Counsel contends, the record supports, and I find that the Respondent seized on this so-called new policy as a pretext to avoid rehiring Angelo for discriminatory reasons.

The record disclosed that Angelo was a longtime openly active union supporter and the Respondent had knowledge thereof. Hicks testified that employee Richard Bowlin told him that some union supporters, including Angelo, had come to his house. (Tr. 775–776.) As noted previously, Angelo wore a union shirt and union buttons at work and handed out union newsletters at the Churubusco facility. Maher acknowledged that he saw these newsletters whenever he'd go to the breakroom for soda and on other occasions when supervisors gave him copies. As early as May or June, Maher told his supervisors that he wanted to be informed of these union activities. (Tr. 427–428.)

Apparently, Maher wasn't merely satisfied with information provided by his supervisors but had to investigate some of these activities more closely. Thus, Maher testified that one Saturday morning in early May or June 1989, while driving to work, he stopped to drive through the parking lot at the Signature Inn. Maher knew that a union meeting was then scheduled at that location because he read one of the Union's newsletters. While Maher asserted that he was in the parking lot for only a matter of seconds, admittedly, he was there long enough to spot Sharon Angelo and wave to employee Willie Pyror. (Tr. 424–428.) When asked why he had to drive through the parking lot at that time, Maher responded ''curiosity.'' In these circumstances, I find that Maher's appearance at the signature Inn was not for any legitimate purpose and tantamount to surveillance within the meaning of Section 8(a)(1).[16]

Against the aforenoted backdrop, I credit Angelo over Hicks' denials that she was interrogated on approximately four separate occasions during the summer of 1989 about

[16] The subject of surveillance was raised in the first instance by the Respondent. Maher responded affirmatively when asked on direct examination whether he had engaged in surveillance. (Tr. 425.) The General Counsel did not then amend the consolidated complaint but waited until the end of the hearing, after all witnesses had testified, to include this allegation in moving to amend the pleadings to the proof. While I expressed displeasure at the General Counsel for using this procedure to include a substantive matter and for not moving earlier, I find after considering the total circumstances that it is appropriate to consider the issue on its merits. In doing so, I have noted particularly that the subject is closely related to other allegations (see fn. 17 below); that there as no element of surprise as the Respondent introduced the subject; and, that the Respondent was given an additional opportunity to meet this allegation but declined noting that there is no dispute as to what occurred. See *American Stores Parking Co*., 277 NLRB 1656–1657 (1986).

union affairs.[17] While under the Board's decision in *Rossmore House*, 269 NLRB 1176 (1984), questioning open and active union supporters about their union sentiments, without more, falls short of coercive interrogation; here, the scope of the inquiries went further. Thus, Hicks not only asked Angelo about the scheduling of the union meetings but also inquired of her to name those employees expected to attend. There was nothing casual or isolated about such repeated questioning. As noted above, Maher instructed his supervisory staff to report to him about such activities. Another employee, Cheryl Hitchcock testified credibly, without contraction, that admitted Supervisor and Agent Sam Kaauwai interrogated her on a number of occasions in much the same manner.

I cannot discern any legitimate purpose to be served by supervisors urging employees, even openly active union supporters, to identify other potential union supporters. See *Pak-Mor Mfg. Co*., 214 NLRB 211 (1974). The employees in the latter group are clearly under no obligation to inform their employer of their interest in attending union meetings. As for the openly active union supporters, they risk not only the displeasure of their employer for their union activity, they also risk being perceived as uncooperative or even insubordinate by failing or refusing to identify other potential union supporters. As such, and in the total circumstances of this case, I find such inquiries coercive and violative of Section 8(a)(1) as alleged.

Having found that Angelo was openly and prominently engaged in union activities which activities were known by Respondent; that Respondent's animus was revealed, by, inter alia, repeated acts of interrogation and also by surveillance; and, noting the timing of Respondent's refusal to rehire Angelo, only weeks after she resigned (a departure from past rehiring practices), I am persuaded that the General Counsel has met his initial burden to warrant an inference that Angelo's union activities was a factor in Respondent's disputed action, as required by the Board's decision in *Wright Line*, 251 NLRB 1083, 1089 (1980). This having been accomplished, under the Board's *Wright Line* test, the burden now shifts to the Respondent to demonstrate that Angelo would not have been rehired even in the absence of her union activities. (Id.)

According to Respondent, in August 1989 and before Angelo quit, it changed its rehiring policy to no longer rehire employees who quit or who were terminated with a high number of points for attendance infractions. Maher considered approximately 7 to 10 or more points in the high range during any calendar year. When Angelo resigned on September 26, she had already accumulated 12-1/2 points for the calendar year. In these circumstances, if I were to find that the Respondent changed its policy for legitimate business reasons unrelated to union activities, I would also find for the Respondent on the merits. The record, however, for reasons noted below persuade me otherwise.

It is undisputed that until Respondent assertedly changed its rehiring policy in August, it had long maintained a liberal policy toward rehiring employees with virtually no regard to whether they had previously accumulated a high number of attendance points. Maher testified that he recommended the change in policy after he examined employee records disclosing that employees with high attendance points continued the same pattern of poor attendance after they were rehired. The record, however, disclosed a number of factors tending to cast doubt on the timeliness of or legitimacy of that decision, to wit, that it was not reached in a context free of antiunion considerations.

The credible evidence disclosed that the incident which led to Maher's investigation and changed policy had virtually nothing to do with employee attendance problems. The incident involved the rehiring of employee Bill Simkins. Shortly before Simkins was rehired, then Plant Manager Glen Barlett informed his personnel manager, Robert Calahan, that he did not want Simkins rehired. Barlett found Simkins' ''work ethic'' deficient. (Tr. 529.) In this connection Barlett noted that Simkins' work performance was ''erratic'' and that he was ''moody.'' (Tr. 529–530.) Significantly, Barlett opined ''I don't believe Bill Simkins had a [sic] absentee problem.'' (Tr. 537.) At another point Barlett testified ''I don't know any way to relate the Bill Simkins incident with the [new] attendance policy.''[18] (Tr. 546.)

In August, notwithstanding Barlett's opposition to Simkins, the latter was rehired. When Barlett discovered this, he complained to Chaffee that he was undermined by Calahan. Chaffee instructed Maher to investigate the circumstances. Maher, for his part, did not present any plausible explanation for linking the Simkins incident with his decision to change the attendance policy. As noted above, the Simkins incident involved a dispute between Calahan and Barlett over the rehiring of Simkins and had nothing to do with Simkins' attendance. In these circumstances, I find that the Respondent seized on the Simkins' incident as a pretext to justify a belated or illusory policy as a defense to its refusal to rehire Angelo. As such, it clearly reflects adversely on Respondent's motivation. The Board has long observed ''A pretextual reason supports an inference of an unlawful one.'' *Keller Mfg. Co*., 237 NLRB 712, 717 (1978).

Also militating against the bona fides of the attendance policy in question is Maher's vague, largely undocumented, and conclusionary testimony regarding his investigation. While Maher maintained that he arrived at his decision for a new attendance policy after examining employee files, I question the bona fides of such an investigation when Maher only found three or four such files to support his conclusion. (Tr. 64.)

[17] The Respondent contends that all the independent 8(a)(1) allegations are time-barred by Sec. 10(b) and are otherwise jurisdictionally deficient on the basis that no reference is made to them in any of the charges or amended charges other than what appears in boilerplate language on preprinted Board charge forms. However, I find, that here, unlike the cases relied on by Respondent, the independent allegations are ''closely related'' to the discriminatory allegations and in the context of the same union campaign.'' See *Nickles Bakery of Indiana*, 296 NLRB 927 (1989); cf. *Harmony Corp*., 301 NLRB 578 (1991). (No factual nexus shown between the alleged interrogation and the Union's organizational campaign, which commenced after the interrogations occurred.)

[18] *Barlett's* credited testimony on this point is clearly inconsistent with the testimony of *Maher* and *Chaffee*. *Maher* testified, that *Simkins* ''was always a good employee'' but that *Barlett* took exception to rehiring him because of his ''poor attendance.'' (Tr. 60.) *Chaffee* also asserted that Barlett's objection to *Simkins* was over attendance. (Tr. 484–485.) I find neither *Maher* nor *Chaffee* credible or reliable in material areas. I also find, as noted infra, that at times their testimony was inconsistent with each other.

Further, the record disclosed that the Respondent rehired some employees after the so-called new policy went into effect notwithstanding that they were terminated for poor attendance. According to Maher, these employees were short-term or 90-day probationary employees and during their orientation period they might have had ''bad luck'' or had they been fully familiar with company rules some of their points might have been excused or removed. Here too, I find little basis to accept Maher's explanation or distinction between long-term (more than 6 months) and short-term employees as plausible. Thus, I fail to discern why short-term employees are more likely to experience a run of bad luck rather than long-term employees.[19] In short, I reject Maher's explanation for distinguishing short-term from long-term employees.

While Respondent defends its refusal to rehire Angelo on the basis of its changed attendance policy, there is little probative or documentary evidence to support this position. The new policy was never memorialized nor were employees ever informed otherwise about changes in rehiring relative to attendance.

Further, I find that the record is devoid of any credible evidence that even the supervisory staff had been made aware of the changed policy at any time before Angelo resigned. If they were, they apparently did not perceive the new policy as firm or definitive. It is noted, for example, that although long-time employee Rodney Williams was terminated in November 1990 for having accumulated 13 points for absenteeism and lateness, his supervisor, Arlene Halsey, recommended that he be reemployed. (R. Exh. 51, last page.) While Halsey testified that at some point Maher informed her of the changed attendance policy, she could not recall when she was so informed. Even Personnel Manager Calahan was uncertain whether the new policy was in effect at the time Angelo reapplied. (Tr. 509.) Both Calahan and Hicks acknowledged telling Angelo that she had to submit a new application if she wanted to be rehired. (Tr. 516–517; 775.) Neither pointed out to her that under the new policy, she would not be rehired. Calahan, when asked why he hadn't told Angelo, was at a loss to explain. (Tr. 517.)

I find that the circumstances involving the rehiring of Richard Geiger in July 1990 are particularly revealing on the question of pretext given the lengths that Maher undertook to protect his decision not to rehire Angelo. Geiger not only had Plant Manager Barlett's endorsement but also Respondent's president and owner, Charles Chaffee, wanted Geiger rehired (notwithstanding the high number of attendance points Geiger had when he last worked for Respondent). Maher acknowledged that Barlett told him that Geiger was the best operator in the history of the Company. (Tr. 333.) However, Maher prevailed over Barlett and Chaffee. In doing so, Maher testified that he had to remind Chaffee of the changes in the attendance policy and persuade him that it would not be wise to rehire Geiger in the face of the Board complaint.[20] (Tr. 430, 456.)

On the basis of the foregoing and on the entire state of the record, I find that the bona fides of a legitimate business decision untainted by union considerations have not been shown. Thus, I find that the Respondent failed to meet its *Wright Line* burden by demonstrating that it would not have rehired Angelo even absent her union activities. Accordingly, I find that Respondent refused to rehire Angelo in violation of Section 8(a)(3) and (1) as alleged.

2. The roster incident; the no-solicitation rule; and assigning pit work to Cheryl Hitchcock and Rodney Williams

a. *Events leading up to the pit assignments*

By letter dated October 24, 1989, the Union put the Respondent on formal notice of its organizational campaign and demanded $1-an-hour increase on behalf of the employees. (G.C. Exh. 14.) The credited testimony (see fn. 8) disclosed that on the morning of October 26, in the breakroom before work began, Rodney Williams solicited signatures from employees on a roster indicating their willingness to publicize at a press conference the Union's demand of $1-an-hour increase. (G.C. Exh. 3.) Hitchcock and a few other employees told Williams to visit them later in the day about signing the roster.

Around 1 p.m. (the employees do not have a lunch period) Williams, a utility employee at that time, relieved Hitchcock at her press for a restroom break and also gave her the roster. Hitchcock signed the roster, folded it, and tucked it into Williams' back pocket. This was observed by Production Manager Hance Hicks who motioned Williams to go to Supervisor Baxter's office. Williams was made to hand over the roster to Hicks. After Hicks and Baxter looked at the document, they had Williams accompany them to Maher's office where Hicks handed Maher the roster.

Maher told Williams that he should not have engaged in such activities on company time. He also gave Williams a ''written verbal warning'' and cautioned him that if he engaged in such activities again he faced further disciplinary action and possible termination. Williams started to ask for his roster but Maher did not want to discuss the matter further and directed Williams to return to work. Later that day Maher noted in writing that he warned Williams that he could not engage in such activities on ''company time.''

According to Respondent, Williams, in violation of the Company's no-solicitation policy, improperly solicited ''signatures on a union roster while he was on work time from other employees during their work time and in work areas.'' (R. Br. at 38.) If, indeed, the Respondent had such a rule, such prohibition would be presumptively valid. *Our Way, Inc.*, 268 NLRB 394 (1983). Here, however, the record disclosed that the Respondent promulgated a much broader rule which was selectively enforced. On this latter point, the record revealed that the Respondent permitted employees at their work stations, inter alia, to sell candy, Girl Scout cookies, Avon products, and solicit signatures for the softball team and birthday and sympathy cards, with virtually no credible or probative evidence of ever invoking discipline. The Respondent does not have any written rule dealing with

[19] According to former Personnel Manager Calahan, at some unspecified time, the new policy was also extended to short-term employees. (Tr. 507.) The Respondent did not offer any explanation or otherwise address Calahan's testimony in this regard.

[20] *Chaffee*, contrary to *Maher*, denied that the subject of the NLRB charge came up in the discussion over the rehiring of *Geiger*. (Tr. 482.) As noted previously, Respondent's witnesses have testified inconsistently in a number of material areas. As such, it tends to reflect adversely on Respondent's overall defenses.

the subject of no-solicitation. According to Maher, employees only learn of the rule if they happened to be observed violating it, at which time they are informed that they cannot solicit on company time. (Tr. 34–35.)

Clearly, the Respondent's rule is overly broad. While it appears that Respondent has permitted solicitation in the breakroom, there is no showing that it is permitted anywhere else. Thus, an employee leaving his or press for a restroom break is ostensibly covered under Respondent's company-time rule because it limits solicitation only to the break room area. In the circumstance of this case, I find that the rule prohibiting solicitation on ''company time'' is invalid. See *New Process Co*., 290 NLRB 704, 708 (1988); *Gemco*, 271 NLRB 1190 (1984).

Having found that Williams did not violate any valid company rule, I find that the Respondent treated him disparately without justification by issuing him a written verbal warning for engaging in protected activities. Similarly, I find that Maher had no legally sufficient basis to retain the roster and his doing so is tantamount to unlawful confiscation, as alleged. See, e.g., *Photo-Sonics, Inc*., 254 NLRB 567 (1981).

b. *Assigning Hitchcock and Williams pit work*

The record disclosed that Williams and Hitchcock openly displayed their support for the Union and that their union activities were well known to Respondent. Having found that the Respondent discriminatorily refused to rehire Angelo within the meaning of Section 8(a)(3) and noting the repeated acts of interrogation and admitted surveillance by Maher, I further find that the record clearly supports an inference of animus on the part of Respondent. The only other element necessary to establish a prima facie case is timing. The disputed pit assignments were made 1 day after the roster incident. Such timing in the circumstances of this case persuade me that the General Counsel has satisfied his *Wright Line* burden.

As noted above, Williams solicited Hitchcock's signature on the union roster. As a result, Maher unlawfully issued Williams a verbal written warning, a departure from past practice. The credited testimony disclosed that the next day, Friday, October 27, Williams and Hitchcock were assigned to clean the pits for the first time.

Pit cleaning is uniformly acknowledged to be a dirty messy job although the degree of difficulty depends on the amount of debris and waste oil accumulated from the press. In any event, any employee assigned to clean the pits can expect to become quite dirty. It is alleged, the record supports, and I find that Williams and Hitchcock were assigned more arduous and onerous work when made to clean the pits.

The record disclosed that the great majority of the time the pits were cleaned only on Saturdays and generally by employees who volunteered to overtime work or by a maintenance crew. It was understood that any employee volunteering to work Saturday overtime could be assigned to do most anything including cleaning the pits. The disputed assignments to Williams and Hitchcock were not made on a Saturday but on a Friday (1 day after the roster incident).

According to the Respondent, overtime work had been curtailed during the time in question which dictated that pit assignments be made during the week. As noted previously, I have found Respondent's witnesses generally elusive, conclusionary, and unreliable, and I find no basis to accept their testimony as credible regarding overtime. With regard to the documentary evidence introduced by Respondent, I find it at best ambiguous. For example, in evidence is a document dated October 20, 1989, containing written instructions on overtime from Production Manager Hance Hicks. Presumably, Hicks would best be able to elucidate regarding his written instructions but was not asked anything about the exhibit. The first item thereon declared ''Stop Overtime!!'' and immediately underneath were overtime instructions for the weekend. (R. Exh. 40.) Without more, I find no basis to read this exhibit as intending to stop overtime for the weekend of October 28. In these circumstances, I find that the Respondent has not demonstrated that the weekday assignments to Williams and Hitchcock had anything to do with a drop in overtime.

The Respondent also defended the disputed weekly assignments on the basis that such assignments are not uncommon. Again, I find that with regard to this contention, as with much of the testimony adduced from Respondent's witnesses, that it was largely conclusionary, exaggerated, vague, confusing, and inconsistent. Former Plant Manager Barlett's testimony is a case-in-point. Barlett testified that at one point in 1989 the Respondent was so busy that the press operators had to keep the presses going ''at all costs'' and could not be assigned any other work including pit work. Significantly, Barlett also testified that the ''practice'' of not having press operators clean the pits during the week ''never really changed.'' Yet, a moment later, in response to a leading question, Barlett retreated from this position to indicate that the practice had changed during the second half of 1989. (Tr. 554–555.)

Williams, a utility employee at the time of the disputed assignment, objected to Hicks on the basis that pit work is not utility work. I find ample support for this position on the record. For example, Williams' immediate supervisor, David Baxter, testified that utility employees are not normally assigned pit work during the week. (Tr. 727.) Further, Barlett noted that utility employees are involved in pit cleanup work only to a ''very minor extent.'' (Tr. 555.)

According to Baxter, as Williams' immediate supervisor, if the pits had to be cleaned, the direct assignment should have come from him even if the decision emanated from Hicks. However, the credited testimony disclosed that on the occasion in question, Hicks made the direct assignment. The legitimacy of the assignment is further discounted in the circumstances of this case noting that Williams had never previously cleaned the pits and it was made only 1 day after his problems with Hicks and Maher over the union roster.

Hicks also assigned pit work to Hitchcock the day after the roster incident. She too (as Williams) had not previously been assigned to clean the pits.[21] On the day the assignment was made, Hitchcock wore a union shirt containing the message that the employees' wages are out of the stone ages. When Hitchcock reported for work that morning, Hicks made

[21] Employee Rosemary Dunbar testified that she saw Williams and Hitchcock clean the pits before the roster event. At times Dunbar responded with the less than positive phrase by saying ''it seemed to me'' and at other times she was unsure. Thus, when asked to give a time frame for the roster event, Dunbar replied ''It seemed like it was in the summer [actually it was late October].'' She did not appear to testify with conviction. In short, I did not find her to be a reliable witness.

the observation ''I see you have a new shirt on'' and asked Hitchcock to explain the message.

Hitchcock and employee Fred Kien were assigned to clean pit 306. This particular pit had not been cleaned for a long time and was extremely messy to clean. For her efforts, Hitchcock cut her finger on a piece of metal for which she was belatedly given permission to get a tetanus shot, and her clothes covered with dirt and oil were ruined. Around 2 p.m. Hicks came by and scolded Hitchcock for not doing a better job and threatened to have her work in the pits again on Monday. He also remarked to Hitchcock that he could no longer read the writing on her shirt.[22] Hicks' remarks to Hitchcock are clearly reflective of his animus and I find are connected to her union activities.

For reasons stated previously, I have found that the General Counsel has satisfied his *Wright Line* burden. I further find that the Respondent has failed to adequately explain and justify its first-time pit assignments to Williams and Hitchcock 1 day after the union roster incident. As such, I find that Respondent has failed to meet its *Wright Line* burden by showing that the disputed assignments would have been made absent the union and other protected activities. In short, I find that the assignments were made in violation of Section 8(a)(3) and (1) as alleged.

3. Other allegations of threats and coercive statements

Angelo attributed certain coercive statements to Hicks and Calahan which I do not credit. She testified that Hicks on two occasions told her that if the Union got in the Respondent would close the plant. Angelo testified that still on another occasion, Hicks told her that as long as she supports the Union she would not be rehired. In regard to Calahan, Angelo testified that he told her that because of the Union she did not get the technician job she wanted.

While I credited Angelo's testimony about Hicks interrogating her, the interrogations were linked to a different frame of reference or context. Thus, it was noted that soon after the union campaign commenced Maher admittedly instructed his supervisors to inform him about union activities. I find it hardly surprising for a supervisor in carrying out such instructions to become overzealous. On the other hand, the record is devoid of any evidence tending to show that Maher encouraged his supervisory staff to threaten employees.

As for the statement Angelo ascribed to Calahan regarding the technician's position, the record disclosed that Angelo did not have the requisite qualifications. As such, I find it highly unlikely and reject the notion that Calahan gratuitously confessed to Angelo that she was denied the job because of her union activities.

While I find that Angelo's testimony for the most part was credible and generally consistent with the record, I also find that when testifying about certain union statements assertedly made to her she was less than fully forthright. For example, Angelo had great difficulties in recalling a statement or inquiries about the Union made by Maher at a meeting she had with him over insurance before she left the Company. When pressed to elucidate, Angelo was vague, equivocal and unresponsive. Subsequently, Angelo indicated that she was unsure that Maher spoke to her at all about the Union while she was still employed. (Tr. 123–127, 142; see also fn. 3 supra.)

Having rejected these allegations, I am still persuaded that most of Angelo's testimony is plausible, consistent with the record, and credible. it has long been observed:

> It is no reason for refusing to accept everything that a witness says, because you do not believe all of it; nothing is more common in all kinds of judicial decisions than to believe some and not all. [*NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950), revd. on other grounds 340 U.S. 474 (1951).]

The General Counsel also adduced testimony from employee Pamala Gordon and Cheryl Hitchcock regarding other alleged coercive statements made by Hicks and Supervisor Kaauwai, respectively. Gordon testified that she asked Hicks if the rumor regarding plant closing if the Union got in was true. She could not recall whether Hicks responded ''probably'' or ''possibly.'' In any event, I find the circumstances too limited and vague to sustain the allegation. It is noted that Gordon's recollection of the brief exchange was equivocal and lacked conviction. As I have found that Hicks did not otherwise make a plant-closing statement and noting that the subject of the Union was first raised by Gordon, I am unpersuaded that he made any plant closing threat. Accordingly, I shall recommend that this allegation be dismissed.

I also reject the allegation of unspecified reprisals attributed to Supervisor Kaauwai by Hitchcock. The entire allegation rests on a statement by Kaauwai that ''there'll be hell to pay'' when the latter noticed that Hitchcock was wearing a union button. Without more, I find this momentary exchange far too vague and ambiguous to draw any definitive connection between union activity and a threat of unspecified reprisals. In short, I find this allegation without merit and shall recommend that it be dismissed.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to rehire employee Sharon Angelo; by issuing a written warning to employee Rodney Williams on October 26, 1989; and by assigning more arduous and onerous work to employees Cheryl Hitchcock and Rodney Williams, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

4. By confiscating union material from employees, interrogating employees, and engaging in surveillance of employees' union activities, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. The General Counsel has not established by a preponderance of the credible evidence that the Respondent induced Sharon Angelo to quit in violation of Section 8(a)(3) and (1) of the Act.

[22] Kien also signed the roster but is not involved as the subject of any of the allegations. Within days, and after the pit assignment, Kien went to Maher and told him that he hadn't read the roster and didn't know what he was signing. Kien was elusive and unresponsive as a witness. I did not find him credible.

7. Other than the independent 8(a)(1) violations noted above in paragraph 4, the Respondent has not otherwise violated Section 8(a)(1) of the Act, as alleged.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of the Act, I shall recommend that it cease and desist therefrom, and to take certain appropriate action to effectuate the purposes and policies of the Act.

Having found that the Respondent failed and refused to rehire Sharon Angelo in violation of Section 8(a)(3), I shall recommend that the Respondent offer her immediate and full employment for the position she would have held absent Respondent's unlawful discrimination or, if such position no longer exists, to a substantially equivalent job, without prejudice to her seniority and other rights and privileges, and to make her whole for any loss of earnings suffered as a result of the discrimination, with backpay computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent issued former employee Rodney Williams an unwarranted written warning in violation of Section 8(a)(1), I shall recommend that it expunge the warning from its records and to notify Rodney Williams, in writing, that it has done so.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, BRC Injected Rubber Products, Inc., Churubusco, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to rehire Sharon Angelo because of her activities on behalf of United Electrical, Radio and Machine Workers of America, (UE) (the Union).

(b) Discriminatorily assigning employees more arduous and onerous work because of their union activities.

(c) Confiscating union material from employees, coercively interrogating employees, and engaging in surveillance of their union activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Sharon Angelo full and immediate employment to the position she would have held had she been rehired or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay suffered as a result of the discrimination against her in the manner set forth above in the section entitled ''The Remedy.''

(b) Expunge from its records the unwarranted written warning given to Rodney Williams for engaging in protected solicitations and advise him, in writing, of the action taken.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records and reports, and all other records necessary to analyze the amount of backpay and other moneys due under the terms of this Order.

(d) Post at its facility in Churubusco, Indiana, copies of the attached notice marked ''Appendix.''[24] Copies of the notice, on forms provided by the Regional Director for Region 25 after being duly signed by a representative of the Respondent, shall be posted immediately upon receipt thereof and shall be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that those allegations found to be without merit are dismissed.

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[24] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''